



TOWN OF SOUTHPORT

1139 Pennsylvania Avenue
Elmira, NY 14904

MINUTES APPROVED
BY BOARD OF APPEALS
11/17/2021

BOARD OF APPEALS

AGENDA AND MINUTES

WEDNESDAY, OCTOBER 20, 2021

PUBLIC HEARING

Joshua Ring, 8 Rolling Acres Road, Pine City, NY 14871

INFORMATIONAL HEARING

Sukhwinder Singh, 3 Longmeadow Drive, Elmira, NY 14905
Re: 1137 Maple Avenue, Elmira, NY 14904

INFORMATIONAL HEARING

Tyler Crater, 9 Crestview Drive West, Pine City, NY 14871

SOUTHPORT TOWN HALL

1139 PENNSYLVANIA AVENUE
ELMIRA, NY 14904

7:00 pm

Webex Meeting

1-415-655-0002

Meeting number (access code): 2341-909-6672

Meeting password: rgg23Kv7svT

Minutes of the Zoning Board of Appeals, Town of Southport, held at the Southport Town Hall, 1139 Pennsylvania Avenue, Elmira, New York on October 20, 2021 at 7:00 p.m.

Board Members Present: Justin Faulkner
Shawn Crater
Ken Wrigley, Alternate

Board Members Absent: Belinda Combs
Susan Silvers
Edward Steinhauer

Others Present: Leslie Connolly, Town Attorney via Webex
Peter Rocchi, Town Code Enforcement Officer
Bonnie Balok, Secretary-Zoning Board of Appeals

Item No.1. Call to Order

Chairman Faulkner called the meeting to order at 7:05 pm.

Item No. 2. Approval of Minutes of September 15, 2021

Chairman Faulkner advised the next item on the agenda was the approval of the minutes of September 15, 2021. Motion made by Mr. Crater to accept the minutes as prepared; seconded by Mr. Wrigley. The minutes of September 15, 2021 were approved.

Item No. 3. New Business

Chairman Faulkner advised the public hearing tonight is held for Joshua Ring, 8 Rolling Acres Road, Pine City, NY 14871 regarding an area variance to allow raising chickens in a R1 zone on a substandard size lot (225 x 130) not in compliance with Section 525-Zoning: Article V-Bulk Density Control Requirements and Section 525-33-Special Requirements (A). Special requirements for each agricultural use identified and defined in Section 525-5 shall apply as follows: (2) The keeping or maintenance of animals or animal waste for any use on any parcel shall not be less than one hundred fifty feet (150') from any residence located on another parcel. (7) An agricultural use, personal: (a) Within any R1 Zoning District that involves animals, shall have a minimum lot of 5 acres.

Item No. 3. New Business (continued)

Joshua Ring, 8 Rolling Acres Road, Pine City, NY 14871

Tax Map #: 117.04-3-54.2

Zoned: R-1

Current Use: Residential

Present: Karen Miller, 8 Rolling Acres Road, Pine City, NY 14871

Ms. Miller advised Mr. Ring had to work and therefore was unable to attend the hearing. Ms. Miller explained she is Mr. Ring's fiancée and would be speaking at the hearing tonight. Ms. Miller explained they have eleven (11) hens, the Easter egg chickens were ordered on line and were sold no less than ten (10); they received twelve (12), there were six (6) different colors. Ms. Miller submitted documents pertaining to the area required per chicken and how big the hen house should be. Ms. Miller further explained they are not raising the chickens for meat; the chickens were purchased for the two (2) girls during the Covid pandemic. Ms. Miller advised the hen house is one hundred fifty feet (150') away from each house and the closest neighbor is Loren Nordin (one hundred fifty one feet (151') from coupe to the corner of the house, front door to front door. Ms. Miller also advised she has signatures from residents who confirm they are okay with the chickens on this property.

Mr. Rocchi advised the measurement is seventy feet (70') from the nearest point of the house to the chicken coupe, lot size is one-third (1/3) acre, seventy foot (70') to Mr. Nordin's line and one hundred thirty (130') to the house above them.

Attorney Connelly explained the Zoning Board of Appeals has become aware, in late summer, there are a number of variances being requested in the R1 District in Pine City to be able to keep chickens and pigs purchased during Covid. The Zoning Office has received complaints concerning a rooster and other things found objectionable. During the July ZBA meeting, the Board agreed they would be seeing more requests. The Town Board addressed an issue in 2018 concerning the number of livestock that can be kept in a R1 District. The ZBA is now concerned that granting variances and listing how many chickens or livestock can be allowed per acre essentially will be running afoul of recently enacted Code changes. The ZBA sent a request to the Town Board requesting review and amending the recently updated the agriculture zoning law, but the Town Board declined to do so because the law was very recently enacted; amending the law would serve no good purpose and as the law is necessary for the purpose of preventing cruelty to animals, as well as many other reasons, the ZBA should think carefully about the present setting. The Town Board is not in favor of considering a new Town Code.

Chairman Faulkner opened the hearing to the public for public comments and advised anyone wanting to speak must give their name and address.

Mr. Steven Cook, 107 Rolling Acres Road, Pine City, NY 14871. Mr. Cook advised he has no issues with the chickens on the property, never thought there were eleven (11) chickens maybe six (6), but he has no problems with the chickens on this site. Mr. Cook explained he had the same issues with chickens at his home and had to get rid of them. Mr. Cook further explained he believes having the chickens teaches children to take care of chickens and eat eggs. Mr. Cook has no issues with the chickens, no mess, no smell and he is in total support of this request. Chickens don't make any noise, dogs make noise and in the area there are dogs that bark all day and night.

Mr. Loren Nordin, 1631 Pennsylvania Avenue, Webbs Mills, NY. Mr. Nordin advised the chickens are well taken care of, he goes over to help and brings his dog over; the dog and chickens don't fight and he has no problem with the chickens on the property.

For the Record: There were four (4) callers on the Webex, who had called in. Chairman Faulkner asked if anyone wanted to make a comment. No responses were provided. Chairman Faulkner closed the public hearing portion of the meeting.

Chairman Faulkner advised the five (5) area variance questions would have to be addressed by Ms. Miller.

The applicant provided the following answers to the area variance questions:

Q1. Whether an undesirable change will be produced in the character of the neighborhood or community or a detriment to nearby properties will be created by the granting of the area variance?

A: Ms. Miller – No, the chickens help with stress and there were no ticks last year.
The church across the street has a support group for stress.

Q2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance?

A. Ms. Miller – No..

Q3. Whether the requested area variance is substantial?

A. Ms. Miller – One hundred fifty foot (150') setback, five (5) acres required; acres versus what is required.

Substantial was explained; Request is substantial: 225 x 130 .

Q4. Whether the proposed area variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood or district?

A. Ms. Miller – No. Fenced in yard, clipped wings, control ticks, no wild life problems, no foxes in yard, no possum, keep skunks away and manure helps the soil; checked with all neighbors they have no problem with chickens,.

Discussion took place concerning definition of livestock versus pets and definitions provided as follows:

Pet-animal living within the dwelling. Not a Pet-animal not living within the dwelling.

Discussion also took place concerning fowl and livestock

One five (5) acres no more than twenty five (25) fowl are allowed for personal use.

Discussion took place concerning definition of poultry

Oxford Dictionary-Fowl, chickens, ducks, geese.

Encyclopedia Britannica-Birds raised for eggs, feathers are poultry.

This issue is going to come down to a reasonable interpretation limited to animal used for consumption or pets; open for interpretation.

Q5. Whether an alleged difficulty of compliance with the zoning requirement was self-created, which is relevant to the decision but shall not necessarily preclude the granting of the area variance?

A. Ms. Miller - Yes, self-created.

Purchased on line from Farm Tractor Supply based upon the sign posted in the area "Right to Farm" sign; assumed this applied to us and there are beef cows at the end of Bird Creek Road.

The "Right to Farm" sign was explained. The "Right to Farm" sign was posted by the Soil and Water Conservation Department in 2010. Any municipality has the right to farm, but didn't look at R1 zone. The Right to Farm community is not a Right to Farm neighborhood.

The Board reviewed the five (5) area variance questions and provided their answers as follows:

Q1. Whether an undesirable change will be produced in the character of the neighborhood or community or a detriment to nearby properties will be created by the granting of the area variance?

Unanimous: No Crater, Wrigley, Faulkner – all no responses

Q2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue,

Unanimous: No Crater, Wrigley, Faulkner – all no responses

Q3. Whether the requested area variance is substantial?

Unanimous: Yes Crater, Wrigley, Faulkner – all yes responses

Q4. Whether the proposed area variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood or district?

Unanimous: No Crater, Wrigley, Faulkner – all no responses

Q5. Whether an alleged difficulty of compliance with the zoning requirement was self-created, which is relevant to the decision but shall not necessarily preclude the granting of the area variance?

Unanimous: Yes Crater, Wrigley, Faulkner – all yes responses

Discussion took place concerning voting on the variance based upon the Board's number of yes responses versus no responses.

Attorney Connolly advised it must be clear to the ZBA as to whether the chickens are to be pets and know what the definition will be. If the Board finds the chickens to be pets and not poultry meant for consumption. The Board could have an interpretation of the code not a variance. What would a reasonable person do?

Chairman Faulkner discussed interpretation pets versus horses.

Ms. Miller advised the horses involved in the Town Board's agriculture law were horses that were repossessed and there was an intention to breed and sell the horses for lots of money.

Discussion also described service animals versus emotional support animals.

Attorney Connolly explained emotional support animal and service animal by providing clarification of an emotional support animal in that it must be demonstrated that somehow the animal provides emotional support and requires a note from a psychiatric specialist. There are questions and a limit on what is considered a service animal.

Ms. Miller asked about the size of the lots that had been granted variances previously. The lot sizes were as follows: 1.4 acres, 67.70 x 149.25, and 50 x 172.45.

Mr. Wrigley requested to cut off the debate.

Mr. Crater made a motion to vote on the variance for Joshua Ring with a no vote denying the variance and a yes vote granting the variance.

Mr. Wrigley seconded the motion.

Secretary Balok called the roll. Mr. Crater-No; Mr. Wrigley-Yes; Mr. Faulkner-No.

Variance denied.

Meeting Adjourned: 7:48 pm

Original on File: Town Clerk, Copy: Town Supervisor, Town Attorney, Town Code Enforcement Officer
Board of Appeals Town Board Planning Board
Minutes 9/15/2021 and Agenda 10/20/21 to: Joshua Ring, 8 Rolling Acres, Pine City, NY 14871

Bonnie J. Balok-
Secretary-Zoning Board of Appeals
October 22, 2021

**MINUTES APPROVED
BY BOARD OF APPEALS
11/17/2021**

Informational Hearing – Tyler Crater
9 Crestview Drive W, Pine City, NY 14871
Area variance- in a R1 zone to allow for an attached garage to be built within required fifteen foot (15') side yard setback

Item No. 3. New Business *(continued)*

Chairman Faulkner advised the next item on the agenda is an informational hearing for Tyler Crater, 9 Crestview Drive West, Pine City, NY 14871 regarding an area variance to allow an attached garage and patio to be built within the required fifteen feet (15') side yard setback per Section 525-24 –Bulk and Density Control Schedule.

Tax Map # 109.09-5-16

Zoned R-1

Current Use: Residential

Present: Tyler Crater

Discussion took place concerning Shawn Crater recusing himself from the informational hearing in order to set a public hearing for next month. It was determined that Mr. Crater recognized a conflict, but it is not material to setting a public hearing for next month. Mr. Crater will recuse himself when the public hearing is held next month.

Mr. Tyler Crater, 9 Crestview Drive West, Pine City, NY 14871. Mr. Crater advised he would like to build an attached garage and patio onto his residence and he needs a variance to do that. This will be three feet (3') from the property line and requires a twelve foot (12') variance. There was an existing carport but that was torn down. The attached garage would be built where the carport was located. The garage and patio will be kept in line with the existing dwelling.

Public hearing set for Wednesday, November 17, 2021 at 7:00 pm, or as soon thereafter as it can be heard. Secretary Balok will send instructions, public hearing details and legal ad to Mr. Crater.

Meeting adjourned: 8: 10 pm

Original on File: Town Clerk, Copy: Town Supervisor, Town Attorney, Town Code Enforcement Officer
Board of Appeals Town Board Planning Board
Minutes of 10/20/21 to: Tyler Crater, 9 Crestview Drive West, Pine City, NY 14871

Bonnie J. Balok-
Secretary-Zoning Board of Appeals
October 22, 2021

4. Old Business

No old business.

5. Discussion

No further discussion.

6. Adjournment

Mr. Crater made a motion to adjourn the meeting; seconded by Mr. Wrigley.

Enclosures Minutes October 20, 2021

Original on File: Town Clerk, Copy: Town Supervisor, Town Attorney, Town Code Enforcement Officer
Board of Appeals Town Board Planning Board
Minutes & Resolution of 10/20/21 to: Joshua Ring, 8 Rolling Acres, Pine City, NY 14871
Minutes of 10/20/21 & Agenda of 11/17/21 to: Mr. Singh and Mr. Crater
Sukhwinder Singh, 3 Longmeadow Drive, Elmira, NY 14905
Tyler Crater, 9 Crestview Drive W, Pine City, NY 14871

Bonnie J. Balok-
Secretary-ZBA-October 22, 2021

**MINUTES APPROVED
BY BOARD OF APPEALS
11/17/2021**

**RESOLUTIONS
2021**

Resolution No. 11

AREA VARIANCE DENIED

PROPERTY:	TAX MAP NO. 117.04-3-54.2 COMMONLY KNOWN AS 8 ROLLING ACRES ROAD	ZONED: R1 PINE CITY, NY 14871
APPLICANT:	JOSHUA RING 8 ROLLING ACRES ROAD	PINE CITY, NY 14871
OWNER:	JOSHUA RING 8 ROLLING ACRES ROAD	PINE CITY, NY 14871
RESOLUTION:	CRATER	SECONDED: WRIGLEY

WHEREAS, Joshua Ring, 8 Rolling Acres Road, Pine City NY 14871 requested an area variance to allow raising chickens in a R1 zone on a substandard size lot (225 x 130) not in compliance with Section 525-Zoning: Article V-Bulk Density Control Requirements and Section 525-33-Special Requirements (A). Special requirements for each agricultural use identified and defined in Section 525-5 shall apply as follows: (2) The keeping or maintenance of animals or animal waste for any use on any parcel shall not be less than 150 feet from any residence located on another parcel. (7) An agricultural use, personal: (a) Within any R-1 Zoning District that involves animals, shall have a minimum lot of 5 acres. Tax Map No. 117.04-3-54.26, Zoned: R1, Current Use: Residential., and

WHEREAS, the Town of Southport Zoning Board of Appeals held a public hearing on October 20, 2021 at 7:00 p.m., or as soon thereafter as it could be heard, at the Southport Town Hall, 1139 Pennsylvania Avenue, Elmira, New York, to consider the granting of an area variance, and

WHEREAS, based upon deliberation, consideration and discussion, the members of the Zoning Board of Appeals were of the opinion an area variance could not be granted based upon inspection of the property, review of the area variance questions, Sections 525. 525-5 and Section 525-33 of the Town Code, and

NOW THEREFORE BE IT RESOLVED an area variance cannot be granted to Joshua Ring, 8 Rolling Acres Road, Pine City, NY 14871, Tax Map #: 117.04-3-64.2, Zoned: R-1, Current Use: Residential, and the building inspector of the Town of Southport be and hereby is not authorized to issue a permit for said use.

Yes Vote: Wrigley
No Votes: Crater and Faulkner
Carried.
October 22, 2021

*Resolution Approved by Board of Appeals
11/17/2021*